

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 203 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? Yes :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?No :

REGIONAL DIRECTOR

Versus

NARSABAI WD/O NARAN PANTAJI

Appearance:

MR SR SHAH for Petitioner

MR JIVANLAL G SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. This is opponent's Appeal against the Judgment and order dated 6.3.1979 of Employees Insurance Court, Ahmedabad, granting declaration that the death of deceased Naran Pantaji was the result of the employment injury and that the applicant is dependent of the said

deceased and is entitled to dependents benefit from the opponent.

2. Brief facts are that an application was moved under Section 77 of the Employees State Insurance Act, 1948 by the widow of Naran Pantaji claiming dependency benefit from the opponent on account of employment injury sustained by her deceased husband who expired on 1.12.1974 out-side the Mill Gate. The deceased was employed in Weaving Department of Nagari Mills. He was working for the last 37 years before the accident. On 1.12.1974 he was to work in the first shift in the Mill. He reached the gate of the Mill by or about 6.45 a.m. whereas his shift was to commence from 7.00 a.m. At about 6.55 a.m. out-side the gate he collapsed and expired. Post Mortem Report revealed the cause of death as cardiac failure. Alleging that the death was caused due to accident in the course of employment and it arose out of employment, the application was moved. The deceased was aged about 55 years on the date of accident.

3. The opponent contested the said application on various grounds. The accident itself was denied. It was pleaded that the said accident did not occur during and in the course of his employment and as such no question of treating the death of the deceased to be due to employment injury. Consequently it was prayed that the application be dismissed.

4. The Court below found that personal injury was caused to Naran Pantaji by accident on 1.12.1974, on account of which he died. It was also found that the said accident arose out of and in the course of employment of the deceased. With these findings and further finding that the applicant is the dependent of the deceased the impugned Judgment and order was rendered by the Court below. It is therefore this Appeal.

5. The Appeal was called out four times at different intervals but non-appears for the respondent. As such Shri S.R.Shah, learned Counsel for the appellant was heard and the Judgment under Appeal was examined.

6. The contention of Shri Shah has been that the case is covered by Apex Court's Judgment in Regional Director, E.S.I. Corporation and another v/s. Francis De Costa & anr., reported in AIR 1997 SC 432. Before appreciating this argument factual aspect of the appeal has to be taken into consideration. From the Judgment of the trial Court it is clear that the so called accident took place on 1.12.1974. The nature of accident was not

such that it occurred inside the factory premises. On the other hand the deceased received cardiac arrest outside the gate of the Mill at about 6.45 a.m. whereas his shift was to commence from 7.00 a.m. Suddenly he collapsed and expired. Post Mortem report revealed that it was a case of cardiac arrest. The trial Court has on mere presumptions and surmises introduced its own concept of nature of injury. It observed that the strain which the deceased undertook in his employment and the strain which he must have taken in coming from his house to the Mill must be the result of acute cardiac failure which he suffered at that place near Mill's gate. The trial Court also inferred that there is nothing in evidence to show any other reason for this cardiac failure. However, inference which was drawn by the trial Court did not find support from the evidence of Dr. Mehta which is contained in Ex.16. Consequently this finding of the trial Court is based on sheer imagination and is not based on evidence, hence it has to be rejected.

7. It is further admitted and established that the cardiac arrest took place outside the gate of the factory. That means the deceased received cardiac arrest while he was coming from his house to attend his first shift in the factory. On this admitted and established fact it has to be seen whether the case is covered by the Apex Court's pronouncement in Regional Director, ESI Corporation (Supra). The Apex Court in this case held that Unless the employee can establish that the injury was caused or had its origin in the employment, he can not succeed in a claim based on Section 2(8) of the Act. The words "accident arising out of his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.

8. The other limitation in Sub.Sec.8 of Section was also considered by the Apex Court in this case. With reference to the words "in the course of his employment" taking aid from various dictionaries the Apex court found that the dictionary meaning indicates that the accident must take place within or during the period of employment. It observed that if the employee's work shift begins at 4.30 p.m., any accident before that time will not be "in the course of his employment". It was also observed that the journey to the factory may have been undertaken for working at the factory at 4.30 p.m. but this journey was certainly not in the course of his employment. If employment begins from the moment the

employee sets out from his house for the factory, then even if the employee stumbles and falls down at the door-step of his house, the accident will have to be treated as to have taken place in the course of his employment. But this interpretation of the words "in the course of his employment", according to the Apex Court, will lead to absurdity and has to be avoided. In this case Section 51-C of the Act was also considered by the Apex court, but that is not relevant for this Appeal because it is nobody's case that the deceased was travelling in any vehicle of the employer.

9. The trial Court has drawn presumption under Section 51-A of the Act for coming to the conclusion that the accident arose in the course of employment. This presumption, to my mind, was erroneously drawn by the Court below. Sec. 51-A of the Act provides that for the purposes of this Act an accident arising in the case of insured person in employment shall be presumed in absence of any evidence to the contrary also to have arisen out of that employment. Section 51-A of the Act cannot be pressed in service in view of Apex Court's verdict in Regional Director, E.S.I. Corporation (Supra) where the facts were identical. In that case the employee while on his way to the factory where he was employed met with an accident which took place 1 k.mtr. away from the place of employment. The injuries suffered by him in such accident could not be said to have been caused by the accident arising out of and in the course of his employment. If this was the view of the Apex Court on the aforesaid fact, in the Appeal before me also the facts are identical inasmuch as the employee had not entered the factory premises; rather he was in between his house and out-side the factory gate. If any injury was sustained by him may be by way of accident or due to cardiac arrest it cannot be said to be an accident arising out of and in the course of employment. The Apex Court's verdict was given on 11.9.1996 where the judgment of the trial Court is dated 6.3.1979. It is therefore manifest that this verdict of the Apex Court could not have been available before the trial Court hence this erroneous approach and was view taken by the trial Court.

10. In my view the case is covered by the Apex Court's verdict (supra). The trial Court was therefore in error in granting declaration regarding dependency benefit and also regarding death of the deceased having been caused due to injury in the course of employment. The Appeal has therefore to be allowed and is hereby allowed. The Judgment and order under Appeal are hereby set aside. No order as to costs.

sd/-

Date : March 14, 2000 (D. C. Srivastava, J.)

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